

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rolando Vasquez	Team: Squad #13	CCRB Case #: 201901290	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday 01/30/2019 4:57 PM	18 Mo. SOL 07-30-2020	EO SOL 03-16-2021	Location of Incident: [REDACTED]		Precinct: 101
Date/Time CV Reported Thu, 01/31/2019 4:08 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 02/12/2019 11:14 AM		

Complainant/Victim	Type	Home Address
1. [REDACTED]	Comp/Victim	[REDACTED] Far Rockaway NY [REDACTED]
2. [REDACTED]	Victim	Refused

Subject Officer(s)	Shield	TaxID	Command
1. POM [REDACTED]	[REDACTED]	[REDACTED]	101 PCT
2. POM Lukasz Solis	14287	943832	101 PCT
3. LT [REDACTED]	[REDACTED]	[REDACTED]	101 PCT

Officer(s)	Allegation	Investigator Recommendation
A . LT [REDACTED]	Abuse of Authority: Lieutenant [REDACTED] entered [REDACTED] in Queens.	A . Unsubstantiated
B . LT [REDACTED]	Abuse of Authority: Lieutenant [REDACTED] searched [REDACTED] in Queens.	B . Substantiated
C . LT [REDACTED]	Abuse of Authority: Lieutenant [REDACTED] failed to provide [REDACTED] with a [REDACTED] card.	C . Alleged Victim Uncooperative
D . LT [REDACTED]	Other Misconduct Noted: Lieutenant [REDACTED] failed to properly document a consent to search as required by NYPD Patrol Guide Procedure 212-11.	D . Other Misconduct
E . LT [REDACTED]	Other Misconduct Noted: Lieutenant [REDACTED] failed to prepare a memo book entry as required.	E . Other Misconduct
F . POM Lukasz Solis	Other Misconduct Noted: Police Officer Lukasz Solis failed to prepare a memo book entry as required.	F . Other Misconduct
G . POM [REDACTED]	Other Misconduct Noted: Police Officer [REDACTED] failed to prepare a memo book entry as required.	G . Other Misconduct

Case Summary

On January 31, 2019, [REDACTED] filed this complaint with IAB by phone on behalf of himself and his friend [REDACTED]. The complaint was received by the CCRB on February 12, 2019 under IAB Log 2019-4947.

On January 30, 2019, at approximately 4:57 p.m., Mr. [REDACTED] left a dry-cleaning [REDACTED] located at [REDACTED] in Queens at which he is a co-owner. Mr. [REDACTED] went to the 101st Precinct stationhouse to file a criminal complaint. Lt. [REDACTED] PO Lukasz Solis, and PO [REDACTED] of the 101st Precinct went to the dry-cleaning [REDACTED] while Mr. [REDACTED] was at the stationhouse. On the authority of Lt. [REDACTED] the dry-cleaning [REDACTED] was entered (**Allegation A: Abuse of Authority, Unsubstantiated**) and searched (**Allegation B: Abuse of Authority, Substantiated**). Lt. [REDACTED] allegedly failed to provide a [REDACTED] card to Mr. [REDACTED], who was overseeing the [REDACTED] in Mr. [REDACTED] absence (**Allegation C: Abuse of Authority, Alleged Victim Uncooperative**). Lt. [REDACTED] failed to properly document a consent to search as required by NYPD Patrol Guide Procedure 212-11 (**Allegation D – Other Misconduct**). Lt. [REDACTED] PO [REDACTED] and PO Solis failed to prepare memo book entries as required (**Allegation E-G – Other Misconduct**).

Surveillance video from the dry-cleaning [REDACTED] was obtained (Video contained in BR01-02; Written summary in BR03). The officers involved in this incident were not equipped with body worn cameras.

Mr. [REDACTED] was arrested while at the stationhouse due to an unrelated open criminal complaint. According to the Office of Court Administration, Mr. [REDACTED] pled guilty to disorderly conduct and was sentenced to time served in connection with that arrest (BR04).

Findings and Recommendations

Allegation A – Abuse of Authority: Lieutenant [REDACTED] entered [REDACTED] in Queens.

Allegation B – Abuse of Authority: Lieutenant [REDACTED] searched [REDACTED] in Queens.

The following facts are undisputed. Lt. [REDACTED] PO [REDACTED] and PO Solis went to [REDACTED] a dry-cleaning [REDACTED] while Mr. [REDACTED] was at the 101st Precinct stationhouse. Lt. [REDACTED] and PO [REDACTED] entered behind the [REDACTED] main counter to search the basement, an area which is not accessible to general members of the public doing [REDACTED] in the store.

Mr. [REDACTED] testified that he is a co-owner of the dry-cleaning [REDACTED] (BR05). Mr. [REDACTED] left the store and went to the 101st Precinct stationhouse to file a criminal complaint against his girlfriend, [REDACTED]. Mr. [REDACTED], a friend of Mr. [REDACTED], remained in the store. Mr. [REDACTED] is not an employee of the dry-cleaning [REDACTED] but occasionally sells items such as DVDs, hats, or other assorted items that are displayed in the storefront window. Mr. [REDACTED] instructed Mr. [REDACTED] to tell any customers that he would be back soon and not to allow anyone behind the store's counter. While at the stationhouse, Ms. [REDACTED] reported to officers that Mr. [REDACTED] had assaulted her and Mr. [REDACTED].

█████ was subsequently arrested. While in custody, Mr. █████ heard officers say that Ms. █████ alleged he had a gun. Mr. █████ was never asked for consent to search his dry-cleaning █████

A brief phone statement about the incident was obtained from Mr. █████ (BR06). Mr. █████ stated that he was seated at the front of the store when three officers entered the store. One of the officers stated, “We’re going in the back behind the counter.” Mr. █████ did not know what to do, did not argue with the officers, and did not say anything to the officers. The officers did not ask Mr. █████ if he worked at the store. Mr. █████ believed that the officers were allowed to search the store because they were police officers. The officers went behind the counter and to the back of the store. An officer asked Mr. █████, “Where’s the safe at?” Mr. █████ said, “I don’t know anything about that. I just work up front for the fella.” The officers did not say anything else to Mr. █████ and left. Mr. █████ was ultimately uncooperative with the investigation (See IAs for contact attempts).

Surveillance video from the dry-cleaning █████ shows officers entering the location and █████ briefly with Mr. █████ before going behind the counter and to the back of the store (BR01-02).

A Domestic Incident Report (DIR) was prepared by PO █████ Carlino who assisted in the arrest █████ of Mr. █████ at the stationhouse (BR08). The DIR was prepared on behalf of Ms. █████, who reported that Mr. █████ had access to guns.

Lt. █████ testified that he left his office and went to the stationhouse lobby where he observed Mr. █████ and Ms. █████ yelling at each other (BR09). Ms. █████ reported that Mr. █████ assaulted her and threatened her with a gun which he stored in a safe in the basement of his dry-cleaning █████ Mr. █████ was about 10 feet away in the complaint room, was not in custody, was on the phone, and was in a position to hear what Ms. █████ was reporting. Mr. █████ was ultimately arrested for assault. Lt. █████ went to the dry-cleaning █████ intending to seek consent from an employee to search the basement for the safe. Lt. █████ did not have any indication that Mr. █████ was an owner of the █████ If Ms. █████’s complaint about the gun was valid and a safe was found, a search warrant would have been requested to secure the safe. Upon arriving at the store, Lt. █████ encountered Mr. █████ and asked him if he was an employee. Mr. █████ affirmed he was. Lt. █████ asked Mr. █████ if the officers could go behind the counter and search the basement. Mr. █████ was cooperative and told the officers they could look around. Lt. █████ did not remember what, if anything, he told Mr. █████ about the officers’ purpose for being there. Lt. █████ and PO █████ went to the basement where no safe or gun was found.

Lt. █████ acknowledged in his CCRB interview that the officers’ investigation at the dry-cleaning █████ was not documented anywhere. Lt. █████ said he committed a clerical error in not documenting this incident (See Allegation D).

PO █████ and PO Solis’ testimony was generally consistent with Lt. █████ and did not provide any additional details or context about the request for consent from Mr. █████ (BR10-11).

Given that the officers went to the location to enter and search the premises on the authority of Lt. [REDACTED] Allegations A-B are pled against Lt. [REDACTED]

A warrantless search of a [REDACTED] may be conducted on the voluntary consent of a third person with authorized access to the area or who appears to have the requisite degree of authorized access. People v. Remo, 98 AD 2d 843 (1983) (BR12).

NYC Administrative Code, Section 14-173 outlines various provisions officers must adhere to when obtaining consent to conduct a search (BR13).

- NYC Administrative Code 14-173(a)(1) – articulate, [REDACTED] plain and simple language delivered in a non-threatening manner, that the person who is the subject of the search is being asked to voluntarily, knowingly, and intelligently consent to the search, and explain that the search will not be conducted if the person refuses to consent to the search;
- NYC Administrative Code 14-173(a)(2) – must obtain consent without threats or promises of any kind being made to the individual;
- NYC Administrative Code 14-173(a)(3) – must affirm that the individual understands the information communicated as per Subsection (a)(1);
- NYC Administrative Code 14-173(a)(4) – must refrain from conducting such search where consent has not been obtained; and
- NYC Administrative Code 14-173(b)(2) – Regardless of the officer having a BWC, the officer must properly document the time, location, and date of such search and the apparent race/ethnicity, gender, age of the person who was the subject of the search and the officer's name, precinct, and shield number.

It is disputed whether Lt. [REDACTED] gained voluntary and informed consent from Mr. [REDACTED] to enter the private areas of the [REDACTED] and search the basement. While they could not describe the conversation in detail, the officers described an encounter in which they asked for and obtained consent from Mr. [REDACTED] to enter and search the basement. In contrast, Mr. [REDACTED] described that the officers did not ask for permission to enter, rather, that the officers told him they were going to enter the store. In response, Mr. [REDACTED] made no objection under the impression that officers had the authority to do so, suggesting he did not know he had the option to refuse consent. The officers acknowledged that consent was needed in order to enter and search the location and they did not describe any condition which created an exigent circumstance or an emergency at the location, especially given that the owner of the reported gun was at the stationhouse. Given the discrepant testimony and the absence of any other material evidence about the encounter, the investigation could not determine whether the officers obtained consent to enter and search the premises. Therefore, it is recommended that **Allegation A** be closed as **unsubstantiated**.

However, the search of the [REDACTED] is being analyzed under the Right to Know Act. It is disputed whether Mr. [REDACTED] provided consent to search the [REDACTED] but undisputed that the [REDACTED] was searched. Given that there is no NYPD documentation of the search, as is required by NYC Administrative Code 14-173(b)(2), it is recommended that **Allegation B** be closed as **substantiated**.

Allegation C – Abuse of Authority: Lieutenant [REDACTED] failed to provide [REDACTED] with a [REDACTED] card.

In his phone statement, Mr. [REDACTED] stated that he did not get any of the officers' names and did not obtain any information from any of them. As described above, Mr. [REDACTED] refused to provide a sworn statement about this incident and was ultimately uncooperative with the investigation (See IAs for contact attempts).

The available video footage did not capture how the encounter ended and did not show if a [REDACTED] card was provided to Mr. [REDACTED].

Lt. [REDACTED] did not remember if he provided a [REDACTED] card to Mr. [REDACTED].

Officers must provide a [REDACTED] card to the subject of a law enforcement activity at the conclusion of the activity. Searches of persons or property constitute a law enforcement activity. NYC Administrative Code, Section 14-174 (BR14).

Given that a sworn statement could not be obtained about this aspect of the incident, it is recommended that **Allegation C** be closed as **alleged victim uncooperative**.

Allegation D – Other Misconduct: Lieutenant [REDACTED] failed to properly document a consent to search as required by Patrol Guide Procedure 212-11.

Allegation E – Other Misconduct: Lieutenant [REDACTED] failed to prepare a memo book entry as required.

Allegation F – Other Misconduct: Police Officer Lukasz Solis failed to prepare a memo book entry as required.

Allegation G – Other Misconduct: Police Officer [REDACTED] failed to prepare a memo book entry as required.

As noted above, Lt. [REDACTED] did not document his request for consent. Lt. [REDACTED] explained during his CCRB interview that prior to his involvement in this incident, one of Lt. [REDACTED] sergeants was injured during an unrelated arrest and had to be taken to the hospital. Due to concerns about this sergeant and the associated paperwork, and the hectic series of events involving Ms. [REDACTED] and Mr. [REDACTED] at the stationhouse, Lt. [REDACTED] failed to document the incident. None of the officers made any entries in their memo books about this incident (BR20).

When requesting consent to search, officers must document the time, location, and date of the request and the apparent race, ethnicity, gender, and age of the person who was the subject of the request on the Common Law Right of Inquiry – Consent Search Report. NYPD Patrol Guide, Procedure 212-11 (BR15).

Officers must record in their activity logs all assignments received, information pertinent to an assignment, and tasks performed. NYPD Patrol Guide, Procedure 212-08 (BR16).

Lt. [REDACTED] failed to document the consent to search on a consent to search report or in his memo book. It is therefore recommended that **Allegation D** be closed as **Other Misconduct**.

None of the officers involved in this incident prepared a memo book entry about the encounter, as required. It is therefore recommended that **Allegations E-G** be closed as **Other Misconduct**.

Civilian and Officer CCRB Histories

- This is the second complaint in which Mr. [REDACTED] is a party and the first complaint in which Mr. [REDACTED] is a party (BR17)
 - 9405003 involved a physical force allegation and was closed by the Board as Administratively Closed.
- Lt. [REDACTED] has been a member of the service for 12 years, has been a subject in five complaints involving six prior allegations, none of which were substantiated. Lt. [REDACTED] CCRB history does not reflect any apparent pattern pertinent to this investigation.

Mediation, Civil and Criminal Histories

- Mr. [REDACTED] declined to mediate this complaint.
- As of September 4, 2019, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to his complaint (BR18).
- According to the Office of Court Administration, Mr. [REDACTED] has no history of criminal convictions in New York City (BR19).

Squad No.: 13

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date